

2001 DRAFTING REQUEST

Assembly Amendment (AA-AB870)

Received: **03/05/2002**

Received By: **kahlepj**

Wanted: **Today**

Identical to LRB:

For: **Gregg Underheim (608) 266-2254**

By/Representing: **Sandy Lonergan**

This file may be shown to any legislator: **NO**

Drafter: **kahlepj**

May Contact:

Addl. Drafters:

Subject: **Insurance - miscellaneous**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Underheim@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Chnages related to patients compensation fund

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	kahlepj 03/05/2002	csicilia 03/05/2002		_____			
/1			kfollet 03/05/2002	_____	lrb_docadmin 03/05/2002	lrb_docadmin 03/05/2002	
/2	kahlepj	csicilia	pgreensl	_____	lrb_docadmin	lrb_docadmin	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	03/06/2002	03/06/2002	03/06/2002 _____		03/06/2002	03/06/2002	

FE Sent For:

<END>

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Subject: Insurance - miscellaneous

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/?	kahlepj 03/05/2002	csicilia 03/05/2002					
/1							

Handwritten notes: 1/2 vs 3/6, 02, 3/6 pg, kfollet 03/05/2002, 3/6, Irb_docadmin 03/05/2002, Irb_docadmin 03/05/2002, and initials.

03/05/2002 05:10:13 PM

Page 2

FE Sent For:

<END>

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Assembly Amendment (AA-AB870)

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Addl. Drafters:

Subject: Insurance - miscellaneous

Extra Copies:

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See Attached

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1/?	kahlepj	1 cjs 3/5 02	18/1 3/5	KLL/jf 2/3/5			

FE Sent For:

<END>

Kahler, Pam

From: Lonergan, Sandra
Sent: Tuesday, March 05, 2002 12:55 PM
To: Kahler, Pam
Subject: FW: OCI AB 870 language



1669C000.tif

Hi Pam,
I swear I'm not doing this willingly! The attached fax contains draft language from OCI for AB 870. The trial attorneys took issue with some of the language in the bill & this fax language represents a compromise. Would you please draft it as an amendment to AB 870 for the floor? The bill is scheduled to be on the floor tomorrow but it's looking more & more likely that the Assembly won't be in tomorrow -- but we will Thursday. Since Joint Finance doesn't seem to be making much progress, they will probably have to meet tomorrow.
Thanks again for all your help on everything! Call or email w/questions.
Sandy

-----Original Message-----

From: Faxination
Sent: Tuesday, March 05, 2002 11:52 AM
To: Rep.Underheim
Subject: OCI AB 870 language

Incoming Fax:
Description:

Explanation:
Sent to: '2823654' CSID:608 261 8579 (0)

Items received: 3
Duration: 58 seconds Transmission speed: 14400 baud
Gateway ID: 0 Job Reference: 1669D

~~~~~



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott McCallum, Governor  
Connie L. O'Connell, Commissioner

Wisconsin.gov

121 East Wilson Street • P.O. Box 787  
Madison, Wisconsin 53707-787  
Phone: (608) 266-3585 • Fax: (608) 266-993  
E-Mail: [information@oci.state.wi.us](mailto:information@oci.state.wi.us)  
[http://badger.state.wi.us/agencies/oci/oci\\_home.htm](http://badger.state.wi.us/agencies/oci/oci_home.htm)

FAX MESSAGE

DATE: 3/5  
TO: Sandy Rep Underkeim's office  
FAX: 282 3654  
FROM: Eileen Mallow (67843)  
SUBJECT: amendment to AB 870  
revised to my OCT and WATC

Pages being sent by fax (including cover sheet): 3

If any pages need to be resent, please call the sender at the number listed above. Otherwise, it is assumed that this transmittal has been completely received.

ASSEMBLY BILL 870

1 Section 25. 655.27 (5) (a) 1. of the statutes is amended to read:

2 655.27 (5) (a) 1. Any person may file a claim for damages arising out of the  
3 rendering of medical care or services or participation in peer review activities under s.  
4 146.37 within this state against a health care provider or an employee of a health care  
5 provider. A person filing a claim may recover from the fund <sup>a.</sup> only if the health care  
6 provider or the employee of the health care provider has coverage under the fund and,  
7 <sup>b.</sup> the fund is named as a party in the action, <sup>c.</sup> and the action against the fund is commenced  
8 within the <sup>same</sup> time limitation (under ss. 893.55, 893.80 or 893.82, as applicable) within  
9 which the action against the health care provider or employee of the health care  
10 provider must be commenced.

11 Section 26. 655.27 (5) (a) 2. of the statutes is amended to read:

12 655.27 (5) (a) 2. Any person may file an action for damages arising four of the  
13 rendering of medical care or services or participation in peer review activities under s. 146.37  
14 outside this state against a health care provider or an employee of a health care provider. A  
15 person filing an action may recover from the fund <sup>d. l.a - d.</sup> only if the health care provider or the  
16 employee of the health care provider has coverage under the fund and, the fund is named as  
17 a party in the action, and the action against the fund is commenced within the <sup>same</sup> time  
18 limitation (under ss. 893.55, 893.80 or 893.82, as applicable) within which the action  
19 against the health care provider or employee of the health care provider must be  
20 commenced. If the rules of procedure of the jurisdiction in which the action is brought  
21 do not permit naming the fund as a party, the person filing the action may recover from  
22 the fund only if the health care provider or the employee of the health care provider has  
23 coverage under the fund and the fund is notified of the action within 60 days of service of



**ASSEMBLY BILL 870**

1 process on the health care provider or the employee of the health care provider. The  
2 board of governors may extend this time limit if it finds that enforcement of the time limit  
3 would be prejudicial to the purposes of the fund and would benefit neither insureds nor  
4 claimants.

5 **Section 26a.** Section 655.455 of the statutes is amended to read:

6 **655.455 Notice to health care providers.** The director of state courts shall serve  
7 notice of a request for mediation upon all health care providers named in the request, at the  
8 respective addresses provided in the request, and upon the patients compensation fund, by  
9 registered mail within 7 days after the director of state courts receives the request if delivered  
10 in person or within 10 days after the date of mailing of the request to the director of state courts  
11 if sent by registered mail.



State of Wisconsin  
2001 - 2002 LEGISLATURE

LRBa1459/  
PJK.....

cjs

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

ASSEMBLY AMENDMENT,  
TO 2001 ASSEMBLY BILL 870

today  
D-note

1 At the locations indicated, amend the bill as follows:

2 1. Page 1, line 10: after "fund" insert "and providing notice of mediation to that  
3 fund".

4 2. Page 11, line 1: delete the material beginning with that line and ending with  
5 page 12, line 2 and substitute:

Fix  
COM  
PONENT

6 "SECTION 25<sup>c</sup> 655.27 (5) (a) 1. of the statutes is amended to read:

renumbered 655.27(5)(a)1.  
(intro.) and

7 655.27 (5) (a) 1. Any person may file a claim for damages arising out of the  
8 rendering of medical care or services or participation in pcr review activities under  
9 s. 146.37 within this state against a health care provider or an employee of a health  
10 care provider. A person filing a claim may recover from the fund only if the all of the  
11 following are satisfied:

1 a. The health care provider or the employee of the health care provider has  
2 coverage under the fund ~~and the~~.

3 b. The fund is named as a party in the action.

History: 1975 c. 37, 199; 1977 c. 29, 131; 1979 c. 34, 194; 1981 c. 20; 1983 c. 27, 158; 1985 a. 340; 1987 a. 27, 186, 247, 399; 1989 a. 102, 187, 332; 1991 a. 214, 315; 1993 a. 473; 1995 a. 40

4 SECTION 25<sup>a</sup>. 655.27 (5) (a) 1. c. of the statutes is created to read:

5 655.27 (5) (a) 1. c. The action against the fund is commenced within the time  
6 limitation under s. 893.55 within which the action against the health care provider  
7 or employee of the health care provider must be commenced.

8 SECTION 25<sup>d</sup>. 655.27 (5) (a) 1. d. of the statutes is created to read:

9 655.27 (5) (a) 1. d. Section 893.80 or 893.82, if applicable to the health care  
10 provider or employee of the health care provider, is complied with.

11 SECTION 26<sup>c</sup>. 655.27 (5) (a) 2. of the statutes is amended to read:

12 655.27 (5) (a) 2. Any person may file an action for damages arising out of the  
13 rendering of medical care or services or participation in peer review activities under  
14 s. 146.37 outside this state against a health care provider or an employee of a health  
15 care provider. A person filing an action may recover from the fund only if the health  
16 care provider or the employee of the health care provider has coverage under the fund  
17 and the fund is named as a party in the action requirements under subd. 1. a. to d.

18 are satisfied. If the rules of procedure of the jurisdiction in which the action is  
19 brought do not permit naming the fund as a party, the person filing the action may  
20 recover from the fund only if the health care provider or the employee of the health  
21 care provider has coverage under the fund and the fund is notified of the action  
22 within 60 days of service of process on the health care provider or the employee of the  
23 health care provider. The board of governors may extend this time limit if it finds

1 that enforcement of the time limit would be prejudicial to the purposes of the fund  
2 and would benefit neither insureds nor claimants.

History: 1975 c. 37, 79, 199; 1977 c. 29, 131; 1979 c. 34, 194; 1981 c. 20; 1983 a. 27, 158; 1985 a. 340; 1987 a. 27, 186, 247, 399; 1989 a. 102, 187, 332; 1991 a. 214, 315; 1993 a. 473; 1995 a. 10.

3 SECTION 26m. 655.455 of the statutes is amended to read:

4 655.455 Notice to health care providers and fund. The director of state  
5 courts shall serve notice of a request for mediation upon all health care providers  
6 named in the request, at the respective addresses provided in the request, and upon  
7 the fund, by registered mail within 7 days after the director of state courts receives  
8 the request if delivered in person or within 10 days after the date of mailing of the  
9 request to the director of state courts if sent by registered mail.”.

History: 1985 a. 340; 1989 a. 187 s. 28.

10 3. Page 12, line 10: delete lines 10 to 12 and substitute:

11 <sup>m</sup>~~(3)~~ PATIENTS COMPENSATION FUND STATUTE OF LIMITATIONS. The treatment of  
12 section 655.27 (5) (a) 2. of the statutes, the amendment of section 655.27 (5) (a) 1. of  
13 the statutes, and the creation of section 655.27 (5) (a) 1. c. and d. of the statutes first  
14 apply to claims arising out of injuries occurring on the effective date of this  
15 subsection.”.

renumbering and

INIT  
APP

(END)

D-note

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBa1459/fdn  
PJK:.....

gs

I have restructured the amendments to s. 655.27 (5) (a) 1. and 2. to accommodate the added language. Sections 893.80 and 893.82 do not provide limitation periods; they require notice 120 days after a cause of action arises, if the cause of action is against a governmental body or a state employee. The limitation period for actually filing the action is still under s. 893.55. I spoke to Bob Nelson about this amendment and he thought the intention might be to alert persons to the fact that a notice under s. 893.80 or 893.82 is required in the applicable situation (if the cause of action is against a governmental body or a state employee). If, instead, the intention is to require the 120-day notice to be provided to the fund under s. 893.80 or 893.82, this amendment does not do that. Sections 893.80 and 893.82 would have to be amended to require notice to go to the fund.

also

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: pam.kahler@legis.state.wi.us

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBa1459/1dn  
PJK:cjs:kjf

March 5, 2002

I have restructured the amendments to s. 655.27 (5) (a) 1. and 2. to accommodate the added language. Sections 893.80 and 893.82 do not provide limitation periods; they require notice 120 days after a cause of action arises, if the cause of action is against a governmental body or a state employee. The limitation period for actually filing the action is still under s. 893.55. I spoke to Bob Nelson about this amendment and he thought the intention might be to alert persons to the fact that a notice under s. 893.80 or 893.82 is required in the applicable situation (if the cause of action is against a governmental body or a state employee). If, instead, the intention is to require the 120-day notice also to be provided to the fund under s. 893.80 or 893.82, this amendment does not do that. Sections 893.80 and 893.82 would have to be amended to require notice to go to the fund.

Pamela J. Kahler  
Senior Legislative Attorney  
Phone: (608) 266-2682  
E-mail: [pam.kahler@legis.state.wi.us](mailto:pam.kahler@legis.state.wi.us)

**Kahler, Pam**

---

**From:** Lonergan, Sandra  
**Sent:** Wednesday, March 06, 2002 10:18 AM  
**To:** Kahler, Pam  
**Subject:** RE: AB 870 AMENDMENT FW: LRBa1459 Topic: Chnages related to patients compensation fund

ok. they are on the way.

-----Original Message-----

**From:** Kahler, Pam  
**Sent:** Wednesday, March 06, 2002 10:14 AM  
**To:** Lonergan, Sandra  
**Subject:** RE: AB 870 AMENDMENT FW: LRBa1459 Topic: Chnages related to patients compensation fund

Yes.

-----Original Message-----

**From:** Lonergan, Sandra  
**Sent:** Wednesday, March 06, 2002 10:06 AM  
**To:** Mallow, Eileen; 'watl'; 'Froehlke, Scott'; 'exec@watl.org'; 'pesicula@asapnet.net'  
**Cc:** Smyrski, Rose; Vance, Vaughn; Kahler, Pam  
**Subject:** RE: AB 870 AMENDMENT FW: LRBa1459 Topic: Chnages related to patients compensation fund

Pam,

Apparently, the amendment for AB 870 doesn't accomplish what people had hoped. You have our permission to draft a different amendment. Do you need the stripes back?

Sandy

-----Original Message-----

**From:** Mallow, Eileen  
**Sent:** Wednesday, March 06, 2002 10:03 AM  
**To:** 'watl'; Lonergan, Sandra; 'Froehlke, Scott'; exec@watl.org; pesicula@asapnet.net  
**Cc:** Smyrski, Rose; Vance, Vaughn  
**Subject:** RE: AB 870 AMENDMENT FW: LRBa1459 Topic: Chnages related to patients compensation fund

OCI understands the tolling issue. My suggestion is to have our staff attorney, Julie Walsh, work directly with Pam Kahler on language that we can all agree to.

Sandy - if it's OK, can you let Pam know?

Eileen Mallow  
Assistant Deputy Commissioner  
608/266-7843  
608/261-8579 FAX  
email: eileen.mallow@oci.state.wi.us

-----Original Message-----

**From:** watl [mailto:watl@mailbag.com]  
**Sent:** Wednesday, March 06, 2002 9:43 AM  
**To:** Lonergan, Sandra; Mallow, Eileen; 'Froehlke, Scott'; exec@watl.org; pesicula@asapnet.net  
**Cc:** Smyrski, Rose; Vance, Vaughn

Subject: Re: AB 870 AMENDMENT FW: LRBa1459 Topic: Chnages related to patients compensation fund

Thank you for sharing the proposed amendment and drafter's note. Unfortunately, the drafter misunderstood what OCI was trying to accomplish with the amendment and has, from our perspective, undone what was intended.

The Supreme Court has interpreted the 120-day notice provision of s. 893.80 as extending the 3-year statute of limitations. There was a portion of our February 28th memo explaining this. What the proposed amendment to this section was trying to do was recognize that whichever of the limitation periods was applicable -- s. 893.55, s. 893.80 or s. 893.82 -- that is the limitation period that must be complied with. Perhaps this can be accomplished by inserting language similar to what OCI proposed in the new section s. 655.27 (5) (a) 1. c. (page 2, lines 5-7 of LRBa1459/1).

We would be happy to work with you on this language.

Nancy Rottier, Research Director  
Wisconsin Academy of Trial Lawyers  
Keeping Wisconsin Families Safe  
Email: [contact@watl.org](mailto:contact@watl.org) Visit our website at: [www.watl.org](http://www.watl.org)  
Phone: 608-257-5741 Fax: 608-255-9285  
Search 80,000+ depos full text at <http://www.DepoConnect.com>

----- Original Message -----

From: "Lonergan, Sandra" <[Sandra.Lonergan@legis.state.wi.us](mailto:Sandra.Lonergan@legis.state.wi.us)>  
To: "Mallow, Eileen" <[Eileen.Mallow@oci.state.wi.us](mailto:Eileen.Mallow@oci.state.wi.us)>; "'Froehlke, Scott'" <[froehlke@execpc.com](mailto:froehlke@execpc.com)>; <[exec@watl.org](mailto:exec@watl.org)>; <[pesicula@asapnet.net](mailto:pesicula@asapnet.net)>  
Cc: "Smyrski, Rose" <[Rose.Smyrski@legis.state.wi.us](mailto:Rose.Smyrski@legis.state.wi.us)>; "Vance, Vaughn" <[Vaughn.Vance@legis.state.wi.us](mailto:Vaughn.Vance@legis.state.wi.us)>  
Sent: Tuesday, March 05, 2002 6:44 PM  
Subject: AB 870 AMENDMENT FW: LRBa1459 Topic: Chnages related to patients compensation fund

> Here is the amendment to AB 870 -- Please read the drafter's note.  
> Unless

I  
> hear differently, this is the amendment that will be introduced in the  
> Assembly.

> Thanks,  
> Sandy

>

> > -----Original Message-----

> > From: Beam, Laura

> > Sent: Tuesday, March 05, 2002 5:10 PM

> > To: Rep.Underheim

> > Subject: LRBa1459 Topic: Chnages related to patients compensation  
> > fund

> >

> > The attached proposal has been jacketed for introduction. <<1459>>  
<<1459

> > Drafter Note>>

>



a/459

Julie Walsh → 48101 (OCI)

by removing all specific statutory  
cross-references, the intention is to  
provide that whatever period of  
time <sup>applies</sup> for commencing an action  
against a health care provider,  
that same period of time applies to  
the fund — including  
any tolling of the statute of  
limitations (as may occur if  
A. 893.80 or 893.82 applies)

By (Adding cross-references to ss. 893.80  
and 893.82 did not give an indication  
of what was intended, certainly not that  
a tolling of a stat of lim would apply to the fund)

**Kahler, Pam**

---

**From:** Walsh, Julie  
**Sent:** Wednesday, March 06, 2002 11:46 AM  
**To:** Kahler, Pam  
**Subject:** RE: AB 870

Pam:

I have an agreement with Nancy Rottier, WATL, to the language you proposed during our conversation (adding "same" deleting "under s. 893.55" in ss. 655.27 (5)(a) 1. and 2.). She is contacting Sandy with Rep. Underheim's office to say the same.

I am drafting a memorandum of understanding for the drafting file.

Could you forward to me a copy of the draft so that I have the correct section references cited within the memorandum of understanding? I am assuming that the sections will return to the original draft with the addition of a section number for 655.455.

Again, thank you very much for your assistance.

Julie E. Walsh  
OCI Attorney  
608-264-8101

-----Original Message-----

**From:** Kahler, Pam  
**Sent:** Wednesday, March 06, 2002 11:34 AM  
**To:** Walsh, Julie  
**Subject:** RE: AB 870 AMENDMENT FW: LRBa1459 Topic: Chnages related to patients compensation fund

Thanks. I will give Julie a call.

-----Original Message-----

**From:** Walsh, Julie  
**Sent:** Wednesday, March 06, 2002 11:22 AM  
**To:** Kahler, Pam  
**Subject:** FW: AB 870 AMENDMENT FW: LRBa1459 Topic: Chnages related to patients compensation fund

Pam:

This is the message I discussed during our conversation. Thank you for your assistance. Your effort and creative problem solving is greatly appreciated.

Julie E. Walsh  
OCI Attorney  
608-264-8101

-----Original Message-----

**From:** Vance, Vaughn  
**Sent:** Wednesday, March 06, 2002 10:15 AM  
**To:** Mallow, Eileen  
**Subject:** FW: AB 870 AMENDMENT FW: LRBa1459 Topic: Chnages related to patients compensation fund

-----Original Message-----

**From:** Kiel, Joyce  
**Sent:** Tuesday, March 05, 2002 3:24 PM  
**To:** Vance, Vaughn  
**Cc:** Offerdahl, Mary; Sweet, Richard  
**Subject:** RE: OCI AB 870 language

Vaughn:

Sections 25 and 26 of the proposed amendment seem to have a technical problem. In both, the phrase "893.80 or 893.82, as applicable," is added to what was proposed in the bill.

The bill would require that a person may recover from the fund only if the action against the fund is commenced within the time limitation under s. 893.55 within which the action against the health care provider or employee of the health care provider must be commenced. (Section 893.55, Stats., includes the statute of limitations for medical malpractice.)

The proposed amendment would also refer to the time limitation under s. 893.80 or s. 893.82, as applicable, within which the action must be commenced. However, ss. 893.80 (claims against certain governmental bodies, officers, agents, or employees) and 893.82 (claims against state employees) do not specify a time limitation within which an action must be commenced. Instead, they require, as a condition precedent to filing an action, that notice of claim must be given by certain deadlines (for medical malpractice, within 180 days after discovery of the injury or the date the injury should have been discovered). If notice is timely filed, these statutes do not control the deadline (statute of limitations) for filing a medical malpractice action. That is still covered by s. 893.55.

Was the intent of the proposed amendment to provide that a person could not recover from the fund if they had failed to timely file the notice of claim under s. 893.80 or 893.82, as applicable? If so, the proposed amendment should be changed to reflect this, rather than referring to a time limitation under s. 893.80 or 893.82 for filing an action.

Let me know if you have questions.

Joyce L. Kiel, Senior Staff Attorney  
Wisconsin Legislative Council Staff  
Suite 401, One East Main Street  
Madison, WI 53703  
608-266-3137  
608-266-3830 (fax)  
Joyce.Kiel@legis.state.wi.us

-----Original Message-----

**From:** Lonergan, Sandra  
**Sent:** Tuesday, March 05, 2002 6:44 PM  
**To:** Mallow, Eileen; 'Froehlike, Scott'; 'exec@watl.org'; 'pescula@asapnet.net'  
**Cc:** Smyrski, Rose; Vance, Vaughn  
**Subject:** AB 870 AMENDMENT FW: LRBa1459 Topic: Chnages related to patients compensation fund  
**Importance:** High

Here is the amendment to AB 870 -- Please read the drafter's note. Unless I hear differently, this is the amendment that will be introduced in the Assembly.

Thanks,  
Sandy

-----Original Message-----

**From:** Beam, Laura  
**Sent:** Tuesday, March 05, 2002 5:10 PM  
**To:** Rep.Underheim  
**Subject:** LRBa1459 Topic: Chnages related to patients compensation fund

The attached proposal has been jacketed for introduction. << File: 1459 >> << File: 1459 Drafter Note >>

## Kahler, Pam

---

**From:** Mallow, Eileen  
**Sent:** Thursday, March 07, 2002 4:21 PM  
**To:** Kahler, Pam  
**Subject:** FW: KAHLER Revised

-----Original Message-----

**From:** Walsh, Julie  
**Sent:** Wednesday, March 06, 2002 2:29 PM  
**To:** Nepple, Fred; Mallow, Eileen; Wedekind, Theresa  
**Subject:** KAHLER Revised



KAHLER Memo  
1.Doc

I revised the memo to clarify that s. 893.55 is intended to apply to the fund and state that there is nothing in these amendments guaranteeing fund coverage or limiting the fund from raising affirmative defenses.

Please comment if you have any.



State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Scott McCallum, Governor  
Connie L. O'Connell, Commissioner

March 6, 2002

Wisconsin.gov

**Legal Unit**  
121 East Wilson Street • P.O. Box 7873  
Madison, Wisconsin 53707-7873  
Phone: (608) 267-9586 • Fax: (608) 264-6228  
E-Mail: legal@oci.state.wi.us  
Web Address: oci.wi.gov

To: Pam Kahler  
Senior Legislative Attorney

Fr: Julie Walsh  
OCI Attorney

Re: Memorandum of Understanding  
Interpretation of 2001-2002 Legislative Session AB 870  
LRBa1459/1

It is the understanding of the Office of the Commissioner of Insurance and the Patients Compensation Fund (Fund), that sections 25, 26 and 26m of AB 870 modifying s. 655.27 (5) (a) 1. and 2., and s. 655.455, Wis. Stats., are intended to require plaintiffs and claimants who seek to recover from the Fund through a medical malpractice action or other action to name the Fund as a party to the action within the statutes of limitations provided within s. 893.55, Wis. Stat., or other applicable statutes which apply to the named health care provider or an employee of a health care provider that are Fund participants. It is further understood that if a statute of limitation is tolled in accordance with applicable statutes including but not limited to ss. 655.455, 893.80 and 893.82, Wis. Stats., the period of time the statute of limitations is tolled would also apply to the Fund.

The amendments to s. 655.27 (5)(a)1. , 2. or 655.455, Wis. Stat., do not guarantee Fund coverage of the incident for which the Fund is being named nor restrict the Fund from raising appropriate affirmative defenses including but not limited to failing to timely name the Fund in the action.

cc: Eileen Mallow  
Assistant Deputy Commissioner

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Director  
Patients Compensation Fund

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State of Wisconsin  
2001 - 2002 LEGISLATURE

LRBa1459/A<sup>2</sup>  
PJK:cjs:kjf

*stays*

*revisions*

ASSEMBLY AMENDMENT,  
TO 2001 ASSEMBLY BILL 870

*today*  
*D-note*

1 At the locations indicated, amend the bill as follows:

2 1. Page 1, line 10: after "fund" insert "and providing notice of mediation to that  
3 fund".

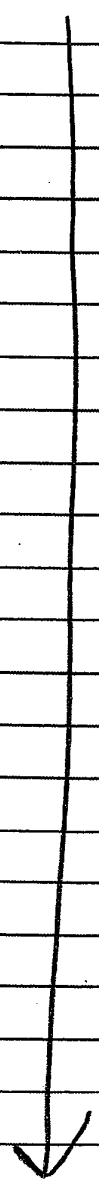
4 2. Page 11, line 1: delete the material beginning with that line and ending with  
5 page 12, line 2, and substitute:

6 ~~"SECTION 25c. 655.27 (5) (a) 1. of the statutes is renumbered 655.27 (5) (a) 1.~~  
7 (intro.) and amended to read:

8 655.27 (5) (a) 1. (intro.) Any person may file a claim for damages arising out  
9 of the rendering of medical care or services or participation in peer review activities  
10 under s. 146.37 within this state against a health care provider or an employee of a  
11 health care provider. A person filing a claim may recover from the fund only if the  
12 all of the following are satisfied:

#. Page 11, line 8: <sup>on lines 8 and 18,</sup> delete "time limitation  
under S. 893.55" and substitute  
"same time limitation".

#. Page 12, line 2: after that line  
insert:



1



“ SECTION 26m. 655.455 of the statutes is amended to read:

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**655.455 Notice to health care providers and fund.** The director of state courts shall serve notice of a request for mediation upon all health care providers named in the request, at the respective addresses provided in the request, and upon the fund, by registered mail within 7 days after the director of state courts receives the request if delivered in person or within 10 days after the date of mailing of the request to the director of state courts if sent by registered mail.”.

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**3.** Page 12, line 10: delete lines 10 to 12 and substitute:

“(3m) PATIENTS COMPENSATION FUND STATUTE OF LIMITATIONS. The treatment of section 655.27 (5) (a) 2. of the statutes, the renumbering and amendment of section 655.27 (5) (a) 1. of the statutes, and the creation of section 655.27 (5) (a) 1. c. and d. of the statutes first apply to claims arising out of injuries occurring on the effective date of this subsection.”.

14

(END)

*D-note*



**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRBa1459/2dn  
PJK:cjs:kjf

Handwritten signature or initials, possibly "T. K. Stays".

This amendment removes all cross-references to specific statutes of limitation to clarify that the action must be brought against the fund within the same period of time that applies to the health care provider, regardless of the statute under which the period of time is determined, including any tolling of the statute of limitations that is required or allowed outside of the statute.

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**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRBa1459/2dn  
PJK:cjs:pg

March 6, 2002

This amendment removes all cross-references to specific statutes of limitation to clarify that the action must be brought against the fund within the same period of time that applies to the health care provider, regardless of the statute under which the period of time is determined, including any tolling of the statute of limitations that is required or allowed outside of the statute.

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